

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DERRICK LARRY,

Petitioner,

vs.

BRIAN WILLIAMS, et al.,

Respondents.

2:10-cv-01826-PMP-LRL

ORDER DISMISSING PETITION

The petitioner has presented the Court with an application to proceed in *forma pauperis* and petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 and has paid the filing fee.

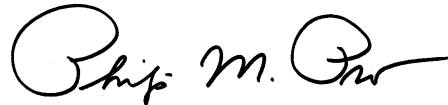
The information provided about petitioner's financial status warrants a grant of in *forma pauperis* status. Petitioner shall not be required to pay the filing fee.

It appears to the Court from the face of the petition that it is fatally flawed. The petition was filed more than six years after his judgment of conviction became final. Petition, Item 2; *see* 28 U.S.C. § 2244(d). Petitioner was convicted on September 8, 2004. He did not file a direct appeal. *See* docket #1-3, p. 1 n.1. Although the petitioner apparently did file a post conviction petition in state court, he did not do so before some eighteen months had passed. The order entered by the Nevada Supreme Court in deciding what appears to be petitioner's second state post conviction petition supports this contention and that the original petition was filed on or about April 24, 2006. *Id.* That order indicates that the second petition, filed on February 24, 2009, was untimely filed and was not reviewable because it was procedurally flawed and petitioner could not demonstrate the necessary cause and prejudice to overcome that flaw.

1 **IT IS THEREFORE ORDERED** that the application for leave to proceed in *forma pauperis*
2 (docket #1) is **GRANTED**.

3 **IT IS FURTHER ORDERED** that the Clerk shall detach and file the petition for writ of habeas
4 corpus (docket #1-2) which is **DISMISSED with prejudice**. The Clerk shall enter judgment
5 accordingly.

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7 DATED: November 3, 2010.

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11 PHILIP M. PRO
12 United States District Judge
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